

REMARKS**Summary of the Office Action**

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Hayashi (U.S. Pat. Pub. No. 2002/0013531) (hereinafter "Hayashi").

Summary of the Response to the Office Action

Applicants have amended independent claim 1, and added new claims 7-8, to differently describe embodiments of the disclosure of the instant application. Accordingly, claims 1, 2 and 4-8 are currently pending and under consideration.

Rejection under 35 U.S.C. § 102(b)

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Hayashi. Claim 3 had previously been canceled without prejudice or disclaimer in this application so it should not be rejected at this time. Applicants have amended independent claim 1 to differently describe embodiments of the disclosure of the instant application. To the extent that these rejections might be deemed to still apply to the claims as newly-amended, they are respectfully traversed for at least the following reasons.

Applicants respectfully submit that independent claim 1 of the instant application has been newly-amended to describe an advantageous combination of features of a lymph node detecting apparatus which includes features describing that:

(1) the optical filter transmits simultaneously, in addition to the fluorescence image, the reflection image of the excitation light at a predetermined light intensity; and

(2) the observation image, in which a fluorescence picture image that corresponds to the fluorescence image and a normal picture image that corresponds to the reflection image are overlapped, is obtained in a single image acquisition by using the single image pickup device.

Applicants respectfully submit that these newly-implemented amendments to claim 1 are made for further clarifying features of the lymph node detecting apparatus of the present invention in a manner which is consistent with the remarks included in the Amendment document previously-filed on October 6, 2009 in this application. Applicants respectfully submit that these previously-filed remarks still apply in this application.

Applicants respectfully submit that the configuration of the lymph node detecting apparatus of the present invention, including the above-described features, is neither disclosed nor suggested in the cited document of Hayashi.

Specifically, Applicants respectfully submit that, in the configuration of the present invention, an optical image, in which the fluorescence image and the reflection image of the excitation light from the living body observation portion are included, reaches the image pickup device upon being transmitted through the optical filter. Then, the image pickup device picks up the incident optical image including the fluorescence image and the reflection image, and outputs the obtained observation image, in which the fluorescence picture image and the normal picture image are overlapped. As a result, the normal picture image and the fluorescence picture image are mixed in the video signal output from the image pickup device. This is described, for example, in paragraph [0043] of the specification of the instant application.

Applicants respectfully submit that in the configuration of the invention disclosed in the instant application, the observation image, in which the fluorescence picture image and the normal picture image are overlapped, is obtained in a single image acquisition by the single image pickup device, as clearly described in newly-amended independent claim 1, without using a superimposer for superimposing the images obtained by the plurality of image pickup devices. Thus, Applicants respectfully submit that the configuration of the lymph node detecting apparatus of the invention disclosed in the instant application, and described in newly-amended independent claim 1, is completely different from the configurations disclosed in Hayashi.

Accordingly, Applicants respectfully assert that the rejections under 35 U.S.C. § 102(b) should be withdrawn because Hayashi does not teach or suggest each feature of newly-amended independent claim 1 of the instant application. As pointed out in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim." Thus, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)."

Applicants respectfully assert that the dependent claims 2 and 4-6, including newly-added dependent claims 7-8, are allowable at least because of their dependence from newly-amended independent claim 1, and the reasons discussed previously.

Further with regard to the features described in newly-added dependent claims 7 and 8, Applicants respectfully submit that there is a description in paragraph [0039] of the specification of the instant application that "[w]hen such an optical filter that transmits the reflection image (normal image) of the excitation light from living body observation portion 20 at a predetermined intensity is used, the reflection image is preferably transmitted at a light intensity

no more than the fluorescence intensity of the fluorescence image, and especially in order to clearly distinguish fluorescence image 11, the reflection image is preferably transmitted at an intensity of no more than 10% and preferably approximately 10% of the fluorescence image.”

Applicants respectfully submit that these features, and their associated effects, of newly-added dependent claims 7 and 8 are also neither disclosed nor suggested in Hayashi.

CONCLUSION

In view of the foregoing amendments and remarks, withdrawal of the rejections and allowance of all pending claims are earnestly solicited. Should the Examiner feel that there are any issues outstanding after consideration of this response; the Examiner is invited to contact Applicants’ undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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